

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

<b>ePLUS INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 3:09-CV-620 (REP)</b>
	)	
<b>v.</b>	)	
	)	
<b>LAWSON SOFTWARE, INC.,</b>	)	
	)	
	)	
<b>Defendant.</b>	)	

**PLAINTIFF ePLUS, INC.'S MOTION IN LIMINE NO. 7:  
TO EXCLUDE EXPERT OPINIONS OF PHILIP GREEN THAT ARE UNRELIABLE,  
UNSUPPORTED IN FACT, AND THAT HE IS UNQUALIFIED TO PRESENT**

Craig T. Merritt (VSB #20281)  
Henry I. Willett, III (VSB #44655)  
**CHRISTIAN & BARTON, LLP**  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219-3095  
Telephone: (804) 697-4100

*Attorneys for Plaintiff, ePlus Inc.*

Scott L. Robertson (admitted *pro hac vice*)  
Jennifer A. Albert (admitted *pro hac vice*)  
David M. Young (VSB#35997)  
**GOODWIN PROCTER LLP**  
901 New York Avenue, N.W.  
Washington, DC 20001  
Telephone: (202) 346-4000

Michael G. Strapp (admitted *pro hac vice*)  
James D. Clements (admitted *pro hac vice*)  
**GOODWIN PROCTER LLP**  
Exchange Place  
53 State Street  
Boston, MA 02109-2881  
Telephone: (617) 570-1000

Pursuant to Federal Rules of Evidence 402 and 702, and *Daubert v. Merrell Dow*

*Pharms.*, 509 U.S. 579 (1993), Plaintiff *ePlus*, Inc. (“*ePlus*”) respectfully moves that the Court preclude Defendant Lawson Software, Inc. (“Lawson”) from presenting certain testimony and evidence from its purported damages expert, Philip Green. In particular, *ePlus* seeks to preclude Mr. Green from offering at trial the following “expert” opinions:

- opinions about Lawson’s “technology acquisitions” agreements and Lawson’s software license and software resale agreements, neither of which are related to the patents-in-suit;
- opinions about alleged non-infringing alternatives to the accused systems that were supposedly available at the time of the hypothetical negotiation between the parties; and
- opinions comparing the patents-in-suit to older modes or devices that were purportedly used for providing similar functionality to that provided by the patented invention.

Mr. Green’s opinions concerning Lawson license and acquisition agreements unrelated to the patents-in-suit should be excluded under Rule 402 because, as the Federal Circuit has repeatedly emphasized, this information is not relevant in a patent infringement damages analysis. Mr. Green’s opinions concerning non-infringing alternatives and comparing the patented technology to old modes and devices should be excluded under Rule 702 because he is unqualified to testify in these areas and because his opinions are neither based on facts or data nor the product of reliable principles or methods. Accordingly, *ePlus* respectfully requests that the Court exclude from evidence testimony and evidence from Mr. Green related to these opinions. A proposed order is attached hereto.

Respectfully submitted,

June 18, 2010

/s/

---

Henry I. Willett, III (VSB #44655)  
Craig T. Merritt (VSB #20281)  
Counsel for Plaintiff *ePlus, Inc.*  
**CHRISTIAN & BARTON, LLP**  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219-3095  
Telephone: (804) 697-4100  
Facsimile: (804) 697-4112  
[hwillett@cblaw.com](mailto:hwillett@cblaw.com)  
[cmerritt@cblaw.com](mailto:cmerritt@cblaw.com)

Scott L. Robertson (*admitted pro hac vice*)  
Jennifer A. Albert (*admitted pro hac vice*)  
David M. Young (VSB #35997)  
**GOODWIN PROCTER LLP**  
901 New York Avenue, N.W.  
Washington, DC 20001  
Telephone: (202) 346-4000  
Facsimile: (202) 346-4444  
[srobertson@goodwinprocter.com](mailto:srobertson@goodwinprocter.com)  
[jalbert@goodwinprocter.com](mailto:jalbert@goodwinprocter.com)  
[dyoung@goodwinprocter.com](mailto:dyoung@goodwinprocter.com)

Michael G. Strapp (*admitted pro hac vice*)  
James D. Clements (*admitted pro hac vice*)  
**GOODWIN PROCTER LLP**  
Exchange Place  
53 State Street  
Boston, MA 02109-2881  
Telephone: (617) 570-1000  
Facsimile: (617) 523-1231  
[mstrapp@goodwinprocter.com](mailto:mstrapp@goodwinprocter.com)  
[jclements@goodwinprocter.com](mailto:jclements@goodwinprocter.com)

Attorneys for Plaintiff, *ePlus Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of June, 2010, I will electronically file the foregoing

**PLAINTIFF *ePLUS, INC.*'S MOTION IN LIMINE NO. 7:  
TO EXCLUDE ANY EXPERT OPINION OF PHILIP GREEN THAT IS UNRELIABLE,  
UNSUPPORTED IN FACT, AND THAT HE IS UNQUALIFIED TO PRESENT**

with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

Daniel McDonald, *pro hac vice*  
William D. Schultz, *pro hac vice*  
Rachel C. Hughey, *pro hac vice*  
Joshua P. Graham, *pro hac vice*  
Andrew Lagatta, *pro hac vice*  
MERCHANT & GOULD  
3200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
Telephone: (612) 332-5300  
Facsimile: 612) 332-9081  
[lawsonservice@merchantgould.com](mailto:lawsonservice@merchantgould.com)

*Counsel for Defendant Lawson Software, Inc.*

Robert A. Angle, VSB#37691  
Dabney J. Carr, IV, VSB #28679  
TROUTMAN SANDERS LLP  
P.O. Box 1122  
Richmond, Virginia 23218-1122  
(804) 697-1238  
(804) 698-5119 (Fax)  
[robert.angle@troutmansanders.com](mailto:robert.angle@troutmansanders.com)  
[dabney.carr@troutmansanders.com](mailto:dabney.carr@troutmansanders.com)

*Counsel for Defendant Lawson Software, Inc.*

\_\_\_\_\_  
/s/  
Henry I. Willett, III (VSB #44655)  
Counsel for Plaintiff *ePlus, Inc.*  
**CHRISTIAN & BARTON, LLP**  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219-3095  
Telephone: (804) 697-4100  
Facsimile: (804) 697-4112  
[hwillett@cblaw.com](mailto:hwillett@cblaw.com)